

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALETTE OTT and LOIRA SANCHEZ,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.
COOPER INTERCONNECT, INC. a corporation; EATON CORPORATION, a corporation; and DOES 1 through 10, inclusive.

Defendants.

Case No. 2:23-cv-04501-SPG-JC

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [ECF NO. 15]**

Before the Court is Plaintiffs Dalette Ott's and Loira Sanchez's motion to remand this proposed class action to the Superior Court of California for the County of Ventura. (ECF No. 15). Defendant opposes. (ECF No. 21). Having considered the parties' submissions, the relevant law, the record in this case, and the parties' oral arguments, the Court **DENIES** Plaintiffs' Motion to Remand.

1 **I. BACKGROUND**

2 Plaintiffs Dalette Ott and Loira Sanchez (together “Plaintiffs”) allege that
 3 Defendants Cooper Interconnect, Inc. and Eaton Corporation (together “Defendants”) have
 4 violated California’s wage and hour laws. (ECF No. 1-1). On April 25, 2023, Plaintiffs
 5 filed a putative class action complaint in the Superior Court of California for the County
 6 of Ventura. (*Id.*). Plaintiffs assert eight causes of action, including a wide range of wage
 7 and hour violations under the California Labor Code, such as failure to pay overtime,
 8 failure to provide meal and rest breaks, and failure to provide accurate wage statements.
 9 (*Id.*). Plaintiffs also assert a cause of action for unfair business practices under California
 10 Business & Professions Code §§ 17200. (*Id.*). Finally, Plaintiffs seek an award of
 11 attorneys’ fees pursuant to California Labor Code § 1194(a). (*Id.* at 24). On June 8, 2023,
 12 Defendants timely removed this action from LASC pursuant to 28 U.S.C. § 1332. (ECF
 13 No. 1 (“NOR”)). On July 10, 2023, Plaintiffs timely filed the instant motion to remand.
 14 (ECF No. 15 (“Mot.”)). Defendants opposed on August 2, 2023, (ECF No. 21 (“Opp.”)),
 15 and Plaintiffs replied on August 9, 2023. (ECF No. 22 (“Reply”)).

16 **II. LEGAL STANDARD**

17 To remove a case from a state court to a federal court, a defendant must file a notice
 18 of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C.
 19 § 1446(a). When removal is based on diversity of citizenship, the amount in controversy
 20 must exceed \$75,000 and the parties must be diverse. 28 U.S.C. § 1332. In a class action
 21 brought outside the Class Action Fairness Act (“CAFA”), at least one named plaintiff in
 22 the class must satisfy the \$75,000 amount in controversy requirement. *See Exxon Mobil*
 23 *Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005); *see also Lewis v. Verizon*
 24 *Comm’ns, Inc.*, 627 F.3d 395, 398 (9th Cir. 2010) (“Prior to CAFA, a class action could
 25 be heard in federal court under diversity jurisdiction only if there was complete diversity,
 26 i.e., all class representatives were diverse from all defendants, and if at least one named
 27 plaintiff satisfied the amount in controversy requirement of more than \$75,000.”); *Kanter*
 28 *v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001) (holding that “if a named

1 plaintiff in a diversity class action has a claim with an amount in controversy in excess of
 2 \$75,000, 28 U.S.C. § 1337 confers supplemental jurisdiction over claims of unnamed class
 3 members irrespective of the amount in controversy in those claims”).

4 The party invoking the removal statute bears the burden of establishing that federal
 5 subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th
 6 Cir. 1988). “The removal statute is strictly construed, and any doubt about the right of
 7 removal requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*,
 8 553 F.3d 1241, 1244 (9th Cir. 2009). Moreover, if it is “unclear or ambiguous from the
 9 face of a state-court complaint whether the requisite amount in controversy is pled, the
 10 removing defendant bears the burden of establishing, by a preponderance of the evidence,
 11 that the amount in controversy exceeds the jurisdictional threshold.” *Urbino v. Orkin
 12 Servs. of Cal., Inc.*, 726 F.3d 1118, 1121–22 (9th Cir. 2013) (internal citations and
 13 quotation marks omitted).

14 **III. DISCUSSION**

15 Plaintiffs argue that Defendant has failed to establish that the amount in controversy¹
 16 exceeds \$75,000 for two reasons. First, Plaintiffs challenge the accuracy and
 17 reasonableness of Defendants’ calculation of damages for the alleged California Labor
 18 Code violations. Second, Plaintiffs challenge Defendants’ calculation of attorneys’ fees,
 19 arguing that it is improperly speculative and improperly includes future fees as to Plaintiffs’
 20 meal and rest break claims.

21 **A. Defendants’ Amount in Controversy for Plaintiffs’ Wage and Hour 22 Claims**

23 “A removing defendant’s notice of removal need not contain evidentiary
 24 submissions but only plausible allegations of jurisdictional elements.” *Salter v. Quality*

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 26 ¹ The parties agree that complete diversity exists between Plaintiff and Defendant. See
 27 (NOR at 3–4 (Plaintiffs are residents of California. Defendant Cooper is a corporation
 28 incorporated in Delaware with its principal place of business in Ohio. (*Id.* at 4). Defendant
 Eaton is a corporation that is both incorporated in and has its principal place of business in
 Ohio.)).

1 *Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (internal citation omitted). However, if
 2 a plaintiff then contests the allegations in the notice of removal, both sides may “submit
 3 proof and the court decides, by a preponderance of the evidence, whether the amount in
 4 controversy requirement has been satisfied.” *Dart Cherokee Basin Operating Co., LLC v.*
 5 *Owens*, 574 U.S. 81, 82 (2014). A plaintiff may contest the allegations in the notice of
 6 removal in two ways. First, a plaintiff may bring a “facial” attack” which “accepts the
 7 truth of the . . . allegations but asserts that they ‘are insufficient on their face to invoke
 8 federal jurisdiction.’” *Salter*, 974 F.3d at 964 (quoting *Leite v. Crane Co.*, 749 F.3d 1117,
 9 1121 (9th Cir. 2014)). When a plaintiff mounts a facial attack, the court resolves it in much
 10 the same way as a motion to dismiss—by accepting the allegations as true, drawing all
 11 reasonable inferences in the defendant’s favor, and determining whether the allegations are
 12 sufficient to invoke the court’s jurisdiction. *Id.* Alternatively, a plaintiff may bring a
 13 “factual attack,” which “contests the truth of the . . . factual allegations, usually by
 14 introducing evidence outside the pleadings.” *Id.* When a plaintiff brings a factual attack,
 15 the defendant must support its allegations with “competent proof” under a summary-
 16 judgment-like standard. *Id.*

17 The parties here appear to dispute whether Plaintiff has mounted a facial or factual
 18 attack. Plaintiff argues that Defendants must produce summary judgment type evidence in
 19 to support the allegations regarding the amount in controversy. Therefore, Plaintiff appears
 20 to argue that the Court should treat its Motion as a factual attack on Defendant’s amount
 21 in controversy allegations. Defendant, on the other hand, argues that Plaintiff’s own lack
 22 of evidence challenging the factual validity of the amounts in controversy dictates that
 23 Plaintiff has merely brought a facial challenge. The Court disagrees with Defendant.

24 A plaintiff may mount a factual attack without introducing evidence outside the
 25 pleadings where he or she “challenge[s] the truth of the defendant’s jurisdictional
 26 allegations by making a reasoned argument as to why any assumptions on which they are
 27 based are not supported by evidence.” *Harris v. KM Industrial, Inc.*, 980 F.3d 694, 700
 28 (9th Cir. 2020). Here, while Plaintiffs do not provide evidence in support of their

1 challenges to Defendants' assumptions, Plaintiffs do challenge the reasonableness of the
 2 assumptions as to Defendants' damages calculation of meal and rest break violations. For
 3 instance, Plaintiffs argue that Defendants unreasonably assume a 100% violation rate when
 4 calculating meal and rest break violation damages. Defendants argue this is appropriate
 5 because Plaintiffs seek civil penalties. However, Plaintiffs' Complaint demonstrates that
 6 they seek compensation for missed meal and rest break violations. *See e.g., Naranjo v.*
 7 *Spectrum Security Servs., Inc.*, 13 Cal. 5th 93, 117 (2022) (describing missed rest breaks
 8 compensation as wages). Therefore, Defendants' assumption of a 100% violation rate must
 9 be supported by the Complaint or other summary-judgment-type evidence.

10 Defendants' have not provided evidence to support a 100% violation rate. The
 11 declarations provided in support of the Removal Notice and Defendants' opposition to the
 12 instant Motion both generally describe Plaintiffs' work schedules, but do not demonstrate
 13 why it is reasonable to assume that a meal or rest break violation occurred on every one of
 14 Plaintiffs' shifts. See (ECF Nos. 1-4, 21-1). Furthermore, the Complaint alleges that, "as
 15 a policy and practice," Defendants did not provide meal and rest periods. (Compl. ¶¶ 17-
 16 18). Courts have found this allegation alone insufficient to support an assumption of a
 17 100% violation rate. *See e.g., Garza v. Brinderson Constructors, Inc.*, 178 F. Supp. 3d
 18 906, 911 (N.D. Cal. 2016) (finding allegation of "policy and practice" of meal and rest
 19 break violations did not support an assumption of a 100% violation rate); *see also Ibarra*
 20 *v. Manheim Investments, Inc.*, 775 F.3d 1193, 1199 (9th Cir. 2015) (finding allegation of
 21 "pattern and practice" of meal and rest break violations did not support assumption that
 22 violations were "universally followed"). However, the Court need not decide whether the
 23 Complaint's "policy and practice" language supports a 100% violation rate here because
 24 Plaintiffs further allege that Defendants "regularly, but not always" required Plaintiffs to
 25 work a full workweek without proper breaks. (Compl. ¶ 17) (emphasis added).²

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 28 ² Defendant argues that this Court should, like the Eastern District of California in *Muniz*
v. Pilot Travel Ctrs. LLC, assume that a 100% violation rate is appropriate where a Plaintiff
 does not include allegations regarding "a violation rate that is discernibly smaller than

1 Defendants' assumption of a 100% violation therefore directly contradicts the language in
 2 the Complaint. In light of this contradiction, and because Defendants did not provide
 3 supplemental evidence to support their assumption of a 100% violation rate, the Court finds
 4 that the assumption is not a reasonable one. However, because Defendants argue in the
 5 alternative that the amount in controversy has been met, even if the Court assumes \$0 in
 6 damages for meal and rest break violations, the Court will not grant the motion to remand
 7 on this basis.

8 **B. Defendants' Amount in Controversy in Attorneys' Fees**

9 Plaintiffs challenge Defendants' calculation of attorneys' fees for multiple reasons.
 10 First, Plaintiffs argue that Defendants improperly include future attorneys' fees for meal
 11 and rest break violations. Second, Plaintiffs argue that Defendants' assumption of 300
 12 hours spent at an hourly rate of \$525 per hour vastly and improperly inflates the amount in
 13 controversy. Instead, according to Plaintiffs, the Court should assume 100 hours will be
 14 spent litigating this matter through trial and the Court should apply an hourly rate of \$300
 15 per hour. The Court examines the latter argument first.

16 "[W]here an underlying statute authorizes an award of attorney's fees, either with
 17 mandatory or discretionary language, such fees may be included in the amount in
 18 controversy." *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). To
 19 determine the amount of attorneys' fees that should be included in the amount in
 20 controversy, courts consider a "reasonable estimate of [authorized] attorneys' fees likely
 21 to be expended." *Lippold v. Godiva Chocolatier, Inc.*, No. C 10-00421 SI, 2010 WL
 22 1526441, at *3 (N.D. Cal. Apr. 15, 2010). This estimate includes "future attorneys' fees
 23 recoverable by statute or contract." *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d
 24 785, 794 (9th Cir. 2018). However, estimates of attorneys' fees for the purposes of

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 26 100%." *Muniz v. Pilot Travel Ctrs., LLC*, No. CIV. S-07-0325 FCD EFB, 2007 U.S. Dist.
 27 LEXIS 31515, at *13–14 (E.D. Cal. Apr. 30, 2007). However, the Court declines to adopt
 28 this interpretation, which is not binding on the Court, finding that it is not supported by the
 plain language of the Complaint here.

1 assessing the amount in controversy should be conservative. *See Guglielmino v. McKee*
 2 *Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007).

3 Defendants' efforts to explain their attorneys' fees while a close call, are ultimately
 4 successful. First, in an effort to support their estimate of \$525 per hour, Defendants point
 5 to two other wage and hour cases involving Plaintiffs' counsel. Defendants argue that,
 6 because Plaintiffs' counsel has previously sought to recover fees in wage and hour actions
 7 with average rates of \$525 and \$650 per hour, the Court may reasonably assume \$525 per
 8 hour when calculating the amount in controversy here. Plaintiffs respond by arguing that
 9 the specific attorneys staffed on those cases were more senior and thus charged higher fees.
 10 At oral argument, Plaintiffs' counsel also argued that, based on her experience, the case is
 11 likely to settle. Therefore, including fees for senior attorneys based on their likely
 12 involvement in trial and trial preparation would be an inaccurate representation of the
 13 amount in controversy. However, Plaintiffs' counsel provides no evidence, for instance in
 14 the form of a declaration, to support this proposition. Nor does Plaintiff provide evidence
 15 to demonstrate why \$300 an hour would be a more appropriate assumption here. Thus,
 16 given the evidence provided by Defendants of fees sought by this same Plaintiffs' counsel
 17 in wage and hour actions, the Court finds the \$525 reasonable for the purposes of
 18 calculating the amount in controversy.

19 Defendants' estimate of hours spent on the instant action to litigate it through trial
 20 proves more problematic. In the Removal Notice, Defendants estimate that Plaintiffs'
 21 counsel will spend a minimum of 300 hours litigating this action. While it is true that
 22 "employment claims have been found to require substantial effort from counsel," 300 hours
 23 is generally the upper end of the estimates employed by courts in this district. *See Sasso*
 24 *v. Noble Utah Long Beach, LLC*, No. CV 14-09154-AB (AJWx), 2015 WL 898468, at *6
 25 (C.D. Cal. Mar. 3, 2015) (internal citation omitted). Indeed, courts in this circuit have often
 26 found 100 hours to be a reasonable estimate in wage and hour cases. *See id.*; *see also*
 27 *Garcia v. Commonwealth Financial Network*, No. 20-cv-1483-BAS-LL, 2020 WL
 28 6886267, at *8 (S.D. Cal. Nov. 24, 2020) (finding 100 hours of attorneys' time in a wage

1 and hour case was an appropriately conservative estimate of time spent to litigate the case
 2 through trial); *Adkins v. J.B. Hunt Transp., Inc.*, 293 F. Supp. 3d 1140, 1148 (E.D. Cal.
 3 2018) (finding the same). While Defendant points to cases in which courts have found 300
 4 hours of attorney time reasonable, Defendant does not explain why the facts in each of
 5 those cases were similar to those presented in the instant action. *See Fritsch*, 899 F.3d at
 6 796 (stating that “a court’s calculation of future attorneys’ fees is limited by the applicable
 7 contractual or statutory requirements that allow fee-shifting in the first place”). For
 8 instance, as Plaintiffs point out, certain claims alleged in their Complaint may “not allow
 9 recovery of attorneys’ fees for legal work.” *Id.* (citing *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal. 4th 1244, 1259 (2012) (stating that the attorneys’ fees shifting provisions do
 10 not apply to legal work relating to meal and rest period claims)). Therefore, Defendants’
 11 estimate of 300 hours appears to be, in part, an estimate of convenience – if the Court
 12 applies the 100 hour estimate that appears more common in this type of case, Defendants
 13 will fail to meet the minimum \$75,000 threshold for one of the named Plaintiffs.³
 14 However, this is not fatal to Defendant’s attempt to establish this Court’s jurisdiction.
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16 Even applying the appropriately conservative estimate of 100 hours to Plaintiff
 17 Sanchez’s claims, Defendants calculations lead to a total amount in controversy of
 18 \$75,875.99. *See* (ECF No. 21 at 18). Thus, because Defendants have demonstrated that
 19 the amount in controversy is met as to at least one of the named Plaintiffs, they have met
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21 ³ In opposition to the instant Motion, Defendants argue that this Court has previously
 22 allowed an estimate of \$60,000 in attorneys’ fees in a single plaintiff wage and hour case.
 23 The Defendants in *Swans v. Fieldworks* estimated that 100 hours of work would be spent
 24 prosecuting the wage and hour case and argued that an hourly rate of \$600 was appropriate.
 25 The Plaintiff in that case did not dispute that \$600 was an appropriate hourly rate. Instead,
 26 the dispute centered around whether 100 hours was too large an estimate given the
 27 likelihood of settlement. The Court found the \$60,000 estimate was appropriate because
 28 the 100-hour estimate was appropriately conservative. Thus, this Court’s ruling in *Swans*
 does not dictate or otherwise indicate that a 300-hour estimate would be appropriate in the
 instant case. Likewise, it does not allow Defendants to simply assume, without explaining
 why, a \$60,000 estimate would be appropriate here.

1 their burden to demonstrate this Court's diversity jurisdiction and the Court **DENIES**
2 Plaintiffs' Motion. *See Lewis*, 627 F.3d at 398 (finding diversity jurisdiction in a putative
3 class action outside the context of CAFA if at least one named plaintiff satisfies the amount
4 in controversy requirement of more than \$75,000, and complete diversity exists).

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Remand.

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8 **IT IS SO ORDERED.**

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10 DATED: August 25, 2023

11 
12 HON. SHERILYN PEACE GARNETT
13 UNITED STATES DISTRICT JUDGE

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